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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Policy and Rules Concerning the ) CC Docket No. 96-61  
Interstate, Interexchange Marketplace )  
 )  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits these comments on petitions for reconsideration of the Federal Communications Commission's ("Commission") Second Report and Order (or "Order") in the above-captioned docket.<sup>1</sup>

In the Second Report and Order, the Commission issued rules which generally prohibit non-dominant carriers from filing tariffs with the Commission for interstate services. The Commission rejected requests from a variety of commenting parties, primarily interexchange carriers, that their interstate services be detariffed on a "permissive" basis. The Commission rejected arguments that prohibiting formal interstate tariffs altogether could increase carrier transaction costs by requiring millions of individual contracts, make casual calling options much more difficult, and prevent carriers from reacting quickly to market

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<sup>1</sup> In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Second Report and Order, FCC 96-424, 4 Comm. Reg. (P&F) 1199 (1996).

conditions by requiring individual notification to their millions of customers before price or condition changes could be made in their contracts.<sup>2</sup> The Commission was not persuaded that federal tariffs conferring federal rights (to the supercession of state consumer protection laws) were still a statutory right held by interstate carriers and concluded that “parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services offered by non-dominant interexchange carriers should be subject to a regulatory regime that is not available to firms that compete in any other market in this country.”<sup>3</sup> The Commission expresses concern that permitting carriers to file tariffs could provide a vehicle whereby carriers could use the tariff process to engage in price manipulation.<sup>4</sup> The Commission also expresses concern that permissive tariffs could still invoke the long-standing “filed-rate doctrine,” whereby carriers could not deviate from their filed rates without themselves incurring significant legal risk (thereby actually aggravating the competitive problems raised by those supporting permissive detariffing).<sup>5</sup>

Several parties, led by AT&T, seek reconsideration of the mandatory detariffing rules.<sup>6</sup> AT&T submits that mandatory detariffing is beyond the scope of

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<sup>2</sup> Id. ¶¶ 57-59.

<sup>3</sup> Id. ¶ 57.

<sup>4</sup> Id. ¶ 61.

<sup>5</sup> Id. ¶ 60.

<sup>6</sup> Petitions for Reconsideration were filed by AT&T Corp. (“AT&T”); Ad Hoc Telecommunications Users Committee, et al.; American Petroleum Institute; Frontier Corporation; General Communication, Inc.; Telecommunications Management Information Systems Coalition; The Rural Telephone Coalition; Telco

the Communications Act and that prohibiting all tariffs would disrupt the smooth operation of its relationships with its customers which have grown up around the use of filed tariffs.<sup>7</sup> AT&T contends that complete mandatory detariffing will result in extensive and unnecessary litigation<sup>8</sup> and contends that no other American business routinely provides service to its customers (including customers with whom no prior relationship exists) before collecting payment for the service or, often, even formalizing the business relationship.<sup>9</sup> AT&T also expresses concern that mandatory detariffing will subject its interstate services to state laws regarding contracts and consumer protection, and that this situation would be well beyond the premise of the Communications Act that interstate telecommunications services are governed by federal law and this Commission.<sup>10</sup>

Despite U S WEST's preference for deregulation and market freedom wherever possible, AT&T appears to have a point. Complete and mandatory detariffing, should it ultimately be a good idea, has clearly not been thought through with sufficient thoroughness to permit its rational implementation according to the Commission's timetable. For more than sixty years, the relationships between interstate carriers and their customers have been a matter of federal law, and this federal law found its expression in interstate tariffs filed with

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Communications Group, Inc.; Telecommunications Resellers Association; and Western Union Communications, Inc.

<sup>7</sup> AT&T at 6.

<sup>8</sup> Id. at 7.

<sup>9</sup> Id. at 8.

<sup>10</sup> Id. at 17.

the Commission. There is no federal contract law outside of tariff law to govern these relationships. Thus, it is possible (indeed, the Order appears fairly specific on this issue) that the contractual relationships between interstate carriers and their customers will revert to state legal principles.

This development might not be bad if interstate carriers had the opportunity to convert all of their operations to conform to the laws of the fifty states (although, as AT&T notes, this exercise could be extremely difficult). However, the Order does not make the services of interstate carriers a purely state matter. Indeed, the Order makes it very clear that interstate carrier offerings, even if detariffed, are still subject to the statutory prohibitions against unjust, unreasonable, and non-discriminatory rates,<sup>11</sup> and that carriers must make their rates public and file annual certifications that they are in compliance with the rate averaging and rate integration provisions of Section 254(g) of the 1996 Act.<sup>12</sup> The Section 208 complaint process is still available to litigate complaints against interstate non-dominant carriers. Thus, the Order still leaves the interstate services of non-dominant carriers subject to federal law and to the extensive rules of this Commission. In other words, the Order does not really remove federal law and regulation from carriers, it merely removes the tariff rights which have governed all parties to interstate carrier services for decades without really replacing them with anything.

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<sup>11</sup> Order ¶ 77.

<sup>12</sup> Id. ¶ 83.

In fact, it seems that the Commission's decision to prohibit tariff filings altogether is based on a worst-case interpretation of what tariff filings mean. We submit that the Commission would be far better advised to permit tariff filings, at least for the present, and conduct a new proceeding to determine just what pieces of the interstate carrier/customer relationship belong in the federal jurisdiction and how the Commission proposes to deal with them.<sup>13</sup> It would also be wise to determine what tariffs should mean in this context and to specify such meaning in rules. There is no reason why, for example, the Commission could not by rule determine that the filed-rate doctrine should not mean what it has historically come to mean in the context of the older non-competitive market.

In this context, it is important that the Commission recognize that mandatory detariffing is disruptive of decades of practice as well as decades of jurisdictional assumptions which have shaped the interstate telecommunications industry. The Order, while making a variety of good observations on how the old regulatory order would not be optimal in a competitive marketplace, has left carriers in a serious quandary by not replacing the tariff regime with anything meaningful. The Commission should grant AT&T's petition and permit tariffs to be

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<sup>13</sup> For example, it may be that permissive tariffs could govern the terms and conditions, but not the prices, of interstate carrier offerings.

filed by non-dominant carriers, at least until the Commission has examined further the full implications of what mandatory detariffing entails.

Respectfully submitted,

U S WEST, INC.

By:

A handwritten signature in dark ink, appearing to read "Robert B. McKenna", followed by a stylized flourish or initials.

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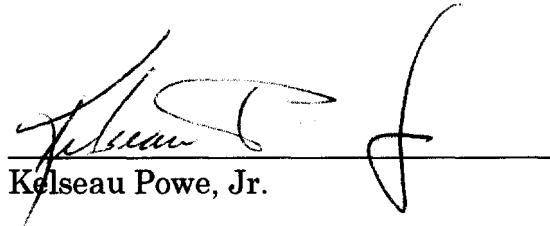
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Of Counsel,  
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January 28, 1997

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 28th day of January, 1997,  
I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be  
served via first-class United States Mail, postage prepaid upon the persons listed on  
the attached service list.



Kelseau Powe, Jr.

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